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13 IN THE UNITED STATES DISTRICT COURT
14 FOR THE NORTHERN DISTRICT OF CALIFORNIA
15 SAN JOSE DIVISION
16

17 IN RE: HIGH-TECH EMPLOYEE
18 ANTITRUST LITIGATION

19 THIS DOCUMENT RELATES TO:

20 ALL ACTIONS
21
22

Master Docket No. 11-CV-2509-LHK

**JOINT CASE MANAGEMENT
STATEMENT**

Date: November 19, 2014
Time: 2:00 p.m.
Courtroom: 8, 4th Floor
Judge: The Honorable Lucy H. Koh

1 The parties submit this joint statement for the November 19, 2014 Case Management
2 Conference (“CMC”).

3 **I. Rescheduling the Pretrial Conference**

4 In light of the April 9, 2015 trial date and ongoing meet and confer efforts between the
5 parties to narrow outstanding issues, the parties jointly request rescheduling the pretrial conference
6 to a date closer to the start of trial. The parties jointly propose either February 27, 2015 or March
7 6, 2015.

8 **II. Rescheduling the Case Management Conference**

9 **A. Defendants’ Position**

10 For the same reasons that the parties jointly request postponement of the pretrial
11 conference, and given the pendency of Defendants’ petition for a writ of mandamus regarding the
12 Court’s denial of the motion for preliminary approval of the settlement, Defendants also request
13 that the Court reschedule the case management conference. The trial date is almost five months
14 away. The briefing on Defendants’ petition for a writ of mandamus in the Ninth Circuit is now
15 complete, but, as discussed more fully below, the Ninth Circuit will not likely schedule oral
16 argument on the petition until January 2015 at the earliest. Additionally, the parties intend to use
17 the additional time in November and December to narrow—and hopefully resolve—their disputes
18 over business records. It would thus be most efficient for the Court and the parties to postpone the
19 case management conference until either December 19, 2014, or January 14, 2015. If any
20 business records disputes remain then, there will be ample time to resolve them and schedule any
21 depositions to be completed by March 2, 2015, as discussed below.

22 **B. Plaintiffs’ Position**

23 Plaintiffs request that the November 19, 2014 Case Management Conference occur as
24 scheduled. The last case management conference took place nearly eight month ago, on March
25 27, 2014. There are seven fully-briefed motions pending before the Court.¹ While the parties
26

27 ¹ These motions include Plaintiffs’ Motion to Compel (Dkt. 789), the resolution of which may
28 impact future settlement discussions. Plaintiffs welcome any questions the Court may have.

1 continue to meet and confer regarding business record disputes, witness lists, and other issues,
 2 regular case management conferences facilitate resolution of issues. For instance, as explained
 3 below, the parties have agreed to file the Joint Statement Regarding Business Record Disputes on
 4 November 17, 2014, two days before the scheduled Case Management Conference. Plaintiffs
 5 welcome discussion with the Court on issues that will likely be presented in that joint filing.

6 **III. Pending Motions**

7 The following motions are fully briefed and pending:

8 (1) Plaintiffs' Motion to Exclude Defendants' Experts (Dkt. 565);

9 (2) Defendants' Motion to Exclude Expert Testimony by Dr. Marx (Dkt. 559);

10 (3) Plaintiffs' Motion to Compel (Dkt. 789);²

11 (4) Plaintiffs' Administrative Motion to Unseal All Papers Associated with Plaintiffs'
 12 Motion to Compel (Dkt. 991);

13 (5) Plaintiffs' Motion for Application of the Per Se Standard (Dkt. 830);

14 (6) Defendants' Administrative Motion for Leave to File a Supplemental Brief in
 15 Connection with Plaintiffs' Motion for Application of the Per Se Standard (Dkt. 990); and

16 (7) Defendants' Motions in Limine (Dkt. 855).

17 The Court's September 8, 2014 Case Management Order states that "the Court will hold a
 18 hearing on any outstanding motions" at the pretrial conference. (Dkt. 986 at 1.) The Court has
 19 already heard argument on the first two motions listed above.

20 **IV. Joint Statement Regarding Business Record Disputes**

21 Pursuant to the Court's September 8, 2014 Case Management Order (Dkt. 986), the parties
 22 are to file a Joint Statement Regarding Business Record Disputes by 30 days prior to the pretrial
 23 conference. The parties are meeting and conferring to substantially reduce the number of
 24 documents in dispute. Because Plaintiffs may seek to take depositions if the business record
 25 disputes are not resolved in advance of the pretrial conference, and because Plaintiffs seek to

27 ² Defendants disagree with Plaintiffs' assertion in footnote 1 above that the resolution of the
 28 Motion to Compel may impact settlement discussions.

1 provide Defendant witnesses with as much advance notice as possible, the parties have agreed to
 2 file the Joint Statement Regarding Business Record Disputes early, on November 17, 2014. The
 3 parties have met and conferred regarding the scheduling of depositions, and Defendants have
 4 agreed to attempt in good faith to schedule any required depositions so that they will be completed
 5 by March 2, 2015. Plaintiffs may seek an order compelling them to do so.

6 **V. Witness Lists**

7 Pursuant to the Court's September 8, 2014 Case Management Order (Dkt. 986), the parties
 8 continue to meet and confer to reduce the number of trial witnesses and will exchange revised trial
 9 witness lists at least 30 days prior to the pretrial conference.

10 **VI. Status of Defendants' Petition for Writ of Mandamus**

11 The parties are awaiting resolution of Defendants' Petition for Writ of Mandamus pending
 12 before the Ninth Circuit, Case No. 14-72745. The parties completed briefing on the merits of the
 13 petition on October 24, 2014. That same day, putative amici curiae Chamber of Commerce of the
 14 United States of America, California Chamber of Commerce, and economic scholars filed motions
 15 for leave to file amici curiae briefs. Real party in interest Michael Devine filed an opposition to
 16 the motions for leave to file amici curiae briefs on October 31, 2014 and real parties in interest
 17 Mark Fichtner, Siddharth Hariharan, and Daniel Stover filed an opposition to the motions for
 18 leave to file amici curiae briefs on November 3, 2014. Also on November 3, 2014, the Ninth
 19 Circuit issued an order referring the motions for leave to file amici curiae briefs to the panel which
 20 will be assigned to hear the merits of the petition.

21 Per the Ninth Circuit's September 22, 2014 order, the petition shall be placed on the next
 22 available calendar for oral argument upon completion of the briefing. To date, no hearing on the
 23 petition has been set. The Ninth Circuit's Rules state that the Clerk gives approximately five
 24 weeks' notice of the hearing date. Ninth Circuit Rules, Court Structure and Procedures § E(7)
 25 ("The Clerk sends a master calendar notice to all counsel of record about five weeks prior to the
 26 date of oral argument."). The Ninth Circuit's next oral argument sitting after December 17, 2014
 27 (five weeks from the date of this filing) is January 5-9, 2015. Ninth Circuit Oral Argument Dates
 28

1 & Locations, <http://www.ca9.uscourts.gov/calendar/>. As a result, the hearing on the petition will
2 not likely take place until January 2015 at the earliest.

3
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